

the filing. The response shall be filed with the office of citizen assistance and, if timely, shall **be** forwarded to the council. }

(5) After conducting a public hearing on the supplemental filing, the city council shall, within the **periods** identified in subsubsection (6), issue a written order, which may be in any lawful form, approving the proposed rate in whole or in **part**, or denying the proposed rate in whole or in part.

(6) The order specified in subsubsection (5) shall be issued within 90 **days** after the tolling order for any rate the franchisee justifies based on the benchmark rates set out in the FCC regulations. The order shall **be** issued within 150 days of the tolling order for any rate the franchisee justifies on the basis of a cost of service analysis.

Sec. **9-3-209** Provisions generally *applicable to rate orders.*

(a) Any rate order of the city council shall be effective upon the date and upon such terms and conditions as specified by the council. A rate order **shall** be released to the public and the franchisee. In any case where the council approves, denies or tolls a rate or charge, orders that a rate or charge may go into effect subject to refund, orders refunds or establishes a rate or charge, a public notice shall be published in a newspaper with general circulation in the city stating that the order has been issued and is available for review in the office of citizen assistance. Any such order shall be in writing, and explain the basis for the **city's** decision.

(b) Except as prohibited by federal law, the city council **may**, as part of a rate order, impose terms and conditions on a franchisee that, it concludes, reasonably advance the public interest. Any order establishing rates or charges other than those proposed by the franchisee shall explain why the franchisee's proposed rates or charges were unreasonable and why the rates and charges established by the order are reasonable. In no event may an order establishing rates or charges other than those proposed by the franchisee **or** requiring a franchisee to make refunds to subscribers be issued by the city council unless and until the franchisee **has** been given notice of, and an opportunity to comment upon, the order.

Sec. **9-3-210** **Obligations of franchisee.**

(a) A franchisee shall implement remedial requirements, **including** refunds and prospective rate reductions, within 60 days of the ~~date~~ on which the city council issues the order imposing the requirements.

(b) Within 90 days of the date on which an order mandating a remedy is issued, a franchisee must file a certification, signed by an authorized representative, stating:

(1) whether the franchisee has complied with **all** provisions of the council order;

(2) describing the measures taken to implement the council order; and

(3) showing how any refunds (including interest thereon) were calculated and distributed.

(c) It is the franchisee's obligation to maintain books and records of account so that it can make proper refunds.

(d) It is the franchisee's obligation to submit as complete a rate filing as possible.

(e) Information requests.

(1) A franchisee and any other person having records showing revenues or expenses that are allocated to the franchisee's cable system in the city shall respond to requests for information from the administrator within reasonable deadlines established by the administrator. A franchisee is responsible for ensuring that such other entity responds to the **city's** requests.

(2) Because federal law limits the time available to the city to provide an initial response to a rate filing, a franchisee shall be prepared to respond to a request for information from the administrator, made prior to the issuance of an order under section 9-3-208(b), within five days of the date it receives the request; provided, that a franchisee may decline to respond to such a request if it consents to the issuance of a tolling order by the council, pursuant to section 9-3-208(b), and to providing the requested information as part of its supplemental filing pursuant to section **9-3-208(c)**. Information requests made under this section may include a request for information that the franchisee would be required to provide as part of a supplemental filing.

Sec. 9-3-211 Duties of the office of citizen assistance and administrator.

(a) The office of citizen assistance and the administrator **shall** be responsible for administering the provisions of this article, as provided below. Without limitation and by way of illustration, and except as inconsistent with FCC regulations:

(1) The office shall **ensure that** notices are given to the public and the franchisee as required by this article and by FCC regulations.

(2) The administrator may submit requests for information to a franchisee and establish deadlines for the franchisee's response to them.

(3) *For* good cause, the administrator may extend any filing or response deadline except as to matters that are mandatory under FCC regulations.

(4) The administrator shall rule on any request for confidentiality.

(5) The office shall prepare the recommendations to the city council under section 9-3-208. If the office recommends that a proposed increase in rates and charges be denied in whole or in part, it shall:

(i) recommend other rates and charges, which may be the franchisee's existing rates and charges, and explain the basis for its recommendation;

(ii) determine whether the franchisee shall make refunds and, if so, recommend an amount of refunds and explain the basis for its determination and recommendation; and

(iii) notify the franchisee of its recommendations and determinations at the time they are submitted to the *council*.

Sec. 9-3-212 Penalties and forfeitures.

Except as prohibited by federal law, a **request by** a franchisee for approval of rates and charges may be denied, **if** the franchisee:

(a) knowingly submits **false** or fraudulent information to the city in connection with any request; or

(b) fails to comply with any lawful order or request **of** the **city**, including, but not limited to, **a** request **for** information and an order setting rates.

Sec. 9-3-213 Proprietary information.

(a) If any provision of this article, or if any request for information properly made pursuant to this article, requires a franchisee to produce for the city what the franchisee considers to be proprietary information, the franchisee shall produce the information. However, at the time such information is produced, the franchisee may request that all or specific, identified portions of the information be treated as confidential and withheld from public disclosure. Such a request shall state the reasons why the identified information should be treated as proprietary and the facts that support those reasons. Requests for the confidential treatment of proprietary information will be reviewed by the administrator based upon FCC regulations and state and local law, as applicable. Any determination by the administrator that information is proprietary and is to be withheld from public disclosure shall be made in writing, and such information shall be placed in a file **for** inspection by the public. If a franchisee's request for the confidential treatment of proprietary information is denied, the franchisee may seek review of the denial by filing a request for review with the city attorney within five working days of the denial, in which case disclosure of the alleged proprietary material shall be stayed pending review. Notwithstanding any provision of this section to the contrary, where a franchisee which is proposing an increase in its rates or charges has submitted what it considers to be proprietary information and has requested the confidential treatment of that information, the city shall, upon the franchisee's withdrawal of its rate filing, immediately return the information.

(b) Information that a franchisee claims is proprietary must be clearly identified. If it is part of a larger submission, such as a rate filing, the proprietary information must be segregated from the remainder of the submission. It must also be clearly marked so that the city may determine where the proprietary information belongs within the submission and how it relates to the remainder of the submission.

(c) Any interested person may file with the administrator a **request** to inspect material that is being withheld as proprietary. In determining such requests, the administrator shall weigh the considerations favoring non-disclosure against the reasons given for permitting inspection in light **of** the facts of the particular case. The administrator may grant, deny or conditionally grant a request. The administrator shall promptly notify the requesting person and the franchisee as to the disposition of the request. The party **aggrieved** by such disposition may seek review of the disposition by filing a request for review with the city attorney. Disclosure will be stayed pending review. Notwithstanding any provision of this subsection to the contrary, the administrator shall deny any

request to inspect proprietary material whenever such inspection is prohibited by federal or state law.

Sec. 9-3-214 *Petition for change in effective competition status.*

A franchisee **may** petition for a change in **effective** competition status, and the city shall consider that petition, in accordance with 47 C.F.R. § 76.915. The petition and three copies shall be filed with the office of citizen assistance.

Sec. 9-3-215 *Regulation of rates; complaints.*

(a) Whenever, including following receipt of a complaint from any subscriber or other person or receipt of an inquiry from the city council, the administrator has **reason** to believe that any provision of this article or any term, condition or provision of a franchise or franchise agreement pertaining to rates and charges that are subject to this article, has been, is being or will be violated, the administrator **shall** promptly undertake to investigate the matter. Notice of the **investigation** shall be given to the franchisee, and the administrator shall undertake to mediate or **otherwise** adjust informally the matter *raised* in the complaint or inquiry. If the matter cannot be adjusted informally, the administrator **shall**, upon notice to the franchisee and the complainant or the city council, *as* the case may be, set the matter for public hearing in accordance with the provision of subsection (b).

(b) In any public hearing under this section, the hearing officer shall be the administrator, unless the council designates otherwise. The hearing **officer shall** provide the franchisee and the complaining party or city council, whichever is applicable, with written notice of the date, time and place of the hearing by first-class mail at least 10 days in advance of the hearing. The hearing officer shall conduct the hearing in such a manner as will expeditiously and accurately ascertain the facts at issue. As far as reasonably possible, the hearing **shall** be informal and free from technical rules of evidence. The franchisee and complainant shall have the right to be represented by counsel at the hearing, to present evidence and testimony, and to **cross-examine witnesses**. The hearing officer shall receive and **consider** such evidence and testimony at the hearing as is deemed relevant. The **franchisee shall furnish** all books, papers or other records requested for review and consideration by the hearing officer, and **shall** make employee or agent available for testimony at the hearing. A taped or stenographic record of the proceeding shall be made.

(c) Not more than 60 days following the hearing, the hearing officer **shall issue** a written decision which shall be final and binding unless appealed. Within 20 days of the date that the written decision is issued, the **franchisee**, the complainant or any subscriber to, the franchisee's system who is aggrieved by the

(decision may appeal it to the **city council**. The decision may be appealed **by** filing with the city clerk a petition which describes the hearing officer's decision, sets forth the reasons why the decision is erroneous, and **requests** the council to review the decision. If an appeal is taken, the decision **of** the hearing officer shall be stayed until the council issues a decision on the appeal.

(d) The administrator shall give public notice of the hearing officer's written decision, and the text of the decision shall be made available to the public.

ARTICLE M

Franchise **Fee**

Sec. 9-3-231 Finding.

The city council finds that public rights-of-way of the city to be used by a franchisee for the operation of a cable system are valuable public properties that have been acquired and maintained by the city, and in some cases the commonwealth of Virginia, at substantial expense to the taxpayers. The city council further finds that the grant of a franchise to use public rights-of-way for a cable system is a valuable property right without which a franchisee would be required to invest substantial capital.

Sec. 9-3-232 Payment to city.

As compensation for use of the public rights-of-way, a franchisee shall **pay** the city a franchise fee in an amount no less than three percent (3%) of its gross revenues. **Every** franchise agreement shall specify the actual percentage **of** the franchisee's gross revenues that the franchisee is initially required to pay as a franchise fee. If the percentage of gross revenues that is specified in a franchise agreement is the maximum which, at the time the agreement is executed, federal and state law authorizes the city to assess as a franchise fee, and if federal or state law is subsequently amended to increase that maximum percentage, then the franchise fee, as a percentage of gross revenues **of** the franchisee subject to the agreement, shall automatically increase to such larger maximum percentage, effective upon the effective date of the amended federal or state law, unless the city expressly declines to apply the larger percentage.

*Sec. 9-3-233 Not a tax or in lieu **of** any other **tax** or fee.*

(a) Payment of the franchise fee shall not be considered a tax or a payment in the nature of a tax.

(b) The franchise **fee** is in addition to all other taxes and **payments** that a franchisee may be required to pay under **any federal, -state or local law**, and to any other tax, **fee or assessment** imposed by utilities or cable operators for use of their services, facilities or equipment, including any **applicable** amusement taxes, except to the extent that such fees, taxes or assessments are required to be treated as a franchise fee under the Cable Act, 47 U.S.C. § 54.

Sec. 9-3-234 Payments.

(a) Unless otherwise provided in a franchise agreement, the franchise **fee** and any other costs **assessed** by the city against a franchisee shall be paid monthly to the city and shall commence as of the effective date of a franchise. The city shall be furnished at the time of each payment with a statement, certified by the franchisee's chief financial officer or an independent certified public accountant, stating that the figure which is reported by the franchisee as its gross revenues for the payment period, and upon which the franchisee fee payment has been based, is a correct representation of the franchisee's gross revenues for the period. Unless otherwise provided in a franchise agreement franchise fee payments shall be made to the city no **later** than 30 days following the end of applicable payment period. Within 90 days of the end of any fiscal year, a franchisee shall file with the administrator an audited financial statement, certified by an independent public accountant, for the just concluded fiscal year, which shall include a statement of the franchisee's gross revenues for the year.

(b) In the event any franchise fee payment is not made on or before its due date as specified in this section, the franchisee shall pay a penalty in the amount of 10 percent of the payment and, in addition, interest charges computed from the payment's due date until the payment is made, using an annual rate of interest equal to the average commercial prime rate of interest of the city's primary depository bank during the period the payment is unpaid.

Sec. 9-3-235 No accord or satisfaction.

The acceptance of any payment by the city shall not be construed as a release or an accord and satisfaction of any claim the city may have for further or additional sums payable as a franchise fee under this article, or as the penalty and interest due on an unpaid franchisee fee payment, or for the performance of any other obligation of a franchisee.

Sec. 9-3-236 Audit and related records.

(a) The city shall have the right to inspect and copy records related to a franchisee's gross revenues that are in the possession or under the control of the franchisee, an affiliate

or any other person that collects or receives funds related to the franchisee's operation in the city. The franchisee shall be responsible for providing such records to the city, without regard to the person possessing them. A franchisee shall ensure that the records which **are** subject to the **city's** right of inspection and copying under this section are maintained **for at least five years.**

(b) The city shall have the right to audit a franchisee's fiscal and financial records, and to recompute any amounts *that* are payable under this article by the franchisee. The expenses for such an audit shall be borne by the city unless the audit discloses an underpayment by a franchisee, in which case the costs of the audit shall- be borne by the franchisee as a cost incidental to the enforcement of its franchise. Any additional amounts due to the city as a result of the audit shall be paid, together with a penalty of 10 percent of such amounts and interest calculated in accordance with section 9-3-234, within 30 days following written notice to the franchisee by the city of the underpayment, which notice shall include a copy of the audit report.

(c) A franchisee shall maintain its fiscal and *financial* records, and ensure that all relevant fiscal and financial records are maintained by others on its behalf, in such a manner as to enable the city to determine the cost of assets of the franchisee which are used in providing services within the city and to determine the franchisee's gross revenues.

ARTICLE N

Insurance; **Indemnification; Performance** Guarantees

Sec. 9-3-251 Insurance required

A franchisee shall maintain and, by its acceptance of a franchise, shall have agreed that it will maintain, throughout the term of the franchise, at least the following liability insurance coverages insuring both the city and the franchisee: worker's compensation and employer liability insurance to meet all requirements of Virginia law; comprehensive general liability insurance with respect to the construction, operation and maintenance of the cable system and the conduct of the franchisee's business in the city; and commercial automobile liability insurance covering all motor vehicles **owed** or leased by franchisee and any other vehicles while driven by franchisee's employees, in the minimum amounts **of:**

(a) **\$2,500,000** for property damage resulting from any one occurrence;

(b) **\$5,000,000** for personal bodily injury or death resulting from any one occurrence; and

(c) **\$1,000,000** for all other types of liability.

The city may review these policy limits no more than once a year and may require reasonable adjustments to them. In the **event** that the franchisee objects to an increase in a policy limit and the parties are unable to agree on a mutually acceptable amount, the dispute shall **be** resolved by arbitration in accordance with the procedures of the American Arbitration Association.

Sec. 9-3-252 Qualifications **of sureties.**

All insurance policies shall **be** with sureties **qualified** to do business in the **commonwealth** of Virginia, **with** an A- or better rating of insurance **by Best's** Key Rating Guide, Property/Casualty Edition, and shall be in a **form** approved by the city.

Sec. 9-3-253 Policies available for review.

All insurance policies maintained by a franchisee shall **be** available for review by the city, and, for each policy, a certificate of insurance shall be filed with the administrator.

Sec. 9-3-254 Additional insureds; prior notice of policy cancellation.

All general liability and automobile liability insurance policies shall name **the** city, its officers, boards, commissions, commissioners, agents and employees as additional named insureds, and shall further provide that any cancellation or reduction in coverage shall not be effective unless 30 **days'** prior written notice thereof has been given to the administrator. A franchisee shall not cancel any insurance policy required by this article without obtaining alternative insurance that has been approved **by** the city.

Sec. 9-3-255 Failure constitutes material violation.

Failure to comply with the insurance requirements set forth in this article shall constitute a material violation of a franchise.

Sec. 9-3-256 Indemnification.

(a) A franchisee shall, at its sole cost and expense, fully indemnify, defend **and** hold-harmless **the** city, and **its officers**, employees and agent from and against any and all losses and any and all claims, suits, actions, liability and judgments for damages or other **relief**, or otherwise subject to the **Cable Act, 47 U.S.C. 558, arising** out of **the** installation, construction, operation or maintenance of the franchisee's cable system, including but not limited to any claim for bodily injury, for property damage, for **the** violation of civil rights, **for** the **invasion** of the right of privacy, for defamation of any person,

for the violation or infringement of any copyright, trade mark, trade name, service mark or patent, or for the violation of any other right of any person. This indemnity requirement does not apply to programming carried on **any** channel set aside for public, educational or government use, or any channel leased pursuant to 47 U.S.C. § 532, unless the franchisee was engaged in determining the editorial content of the program, **or** had a policy **of prescreening** programming for the purported purpose of banning indecent or obscene programming.

(b) The indemnity obligation of a franchisee under this section shall include, but **is** not limited to, providing legal representation and otherwise defending the city and city offices, employees and agents against any claim, suit, or action referenced in subsection (a).

(c) The city shall provide a franchisee with prompt notice of any loss, claim, suit or action referenced in subsection (a).

Sec. 9-3-257 No Limit of **liability**.

Neither the provisions of this article nor any damages recovered or indemnification received by the city shall be construed to limit the liability of a franchisee for damages under any franchise issued pursuant to this chapter.

Sec. 9-3-258 No **recourse**.

Without limiting such immunities as it may have under applicable law, the city shall not be liable to a franchisee for any loss or damages that the franchisee may suffer as the result of the city's exercise of its authority pursuant to this chapter, a franchise agreement or other applicable law.

Sec. 9-3-259 Security fund.

(a) Prior to a franchise becoming effective, the franchisee shall post with the city a cash security deposit to be used as a security fund to ensure the franchisee's faithful performance of and compliance with all provisions of this chapter, the franchise agreement and other applicable law, and all orders, permits and directions of the city, including the franchisee's payment of any claims, liens, **fees**, taxes or other payments due the city under this chapter, the franchise agreement or other law. The amount of the security fund **shall be** equal to three percent of the franchisee's projected annual average gross revenues.

(b) In lieu of a cash security fund, a franchisee **may** file and maintain with the city an irrevocable letter **of credit with** an acceptable surety in the amount specified in the preceding paragraph to serve the same purposes as set forth **therein**. Said letter of credit shall remain in effect for the full term of the franchise plus an additional six (6) months thereafter. The

franchisee and its surety shall be jointly and severally liable under the terms of the letter of credit for the franchisee's failure to ensure its faithful performance of and compliance with all provisions of this chapter, the franchise agreement and other applicable law, and all orders, permits and directions of the city, including the **franchisee's** payment of any claims, liens, fees, taxes or other payments due the city under this chapter, the franchise agreement or other law. The letter of credit shall provide for 30 days' written notice to the city prior to its cancellation, non-renewal or any material alteration of its terms. Neither the filing of a letter of credit with the city, nor the city's receipt of any payment thereunder, shall be construed to excuse **the** franchisee's faithful performance of and compliance with all provisions of this chapter, the franchise agreement and **other** applicable law, and all orders, permits and directions of the city, or to limit the liability of the franchisee for damages.

(c) The rights of the city with respect to the security fund are in addition to all other rights of the city provided by this chapter, other law, a franchise and a franchise agreement, and no action, proceeding or exercise of a right with respect to such security fund or letter of credit shall affect any such other rights of the city.

(d) The following procedures shall apply to drawing on the security fund and letter of credit:

(i) If **the** franchisee fails to make timely payment to the city of any amount due under its franchise, a franchise agreement or applicable law, fails to make timely payment to the city of any taxes due, or fails to compensate the city within 10 days of written notification that such compensation is due for damages, costs or expenses that the city has incurred by reason of any act or omission of the franchisee in connection with its franchise or franchise agreement, or by reason of the city's enforcement of this chapter, the **franchise** or the franchise agreement, the city may withdraw **the** amount which it is due, with any interest and penalties that are payable, from the security fund or from monies available under the letter of credit.

(ii) Within three days of a withdrawal from the security fund or under the letter of credit, the city shall, by certified mail, return receipt requested, provide written notification of **the** amount, date and purpose of such withdrawal to the franchisee.

(iii) If, at **the time** of a withdrawal from the security fund and under the letter of credit by **the** city, the amounts available are insufficient to provide the total payment towards which the withdrawal is directed, the balance of such payment shall continue as the obligation of the franchisee to the city until it is paid.

(iv) No later than 30 days after providing the notice under subsection (ii), the franchisee shall deliver to the city, for deposit ~~in~~ the security fund, an amount **equal** to the amount so withdrawn and shall restore the letter ~~of~~ credit to its original amount. Failure to make timely delivery of such amount to the city or to restore the letter of credit shall constitute a material violation of the franchise.

(v) Upon termination of the franchise under conditions other than those providing for forfeiture of the security fund, the balance then remaining in the fund shall be withdrawn by the city and **paid** to the franchisee within 90 days of such termination, provided that there is then no outstanding default on the part of the franchisee.

Sec. 9-3-260 Performance bond.

(a) Prior to any cable system construction, upgrade or other cable-related work in the public rights of way, a franchisee shall establish in the city's favor a performance bond, in an amount specified in the franchise agreement or other authorization, to ensure the franchisee's faithful performance of the construction, upgrade or other work. Except as otherwise provided in a franchise agreement, the amount of any required performance bond shall be **equal** to 10 percent of the total cost of the work.

(b) In the event a franchisee subject to a performance bond fails to complete the construction, upgrade or other work secured by the bond in a safe, timely and competent manner in accord with the provisions of a franchise agreement, there shall be recoverable, jointly and severally from the principal and surety of the bond, any damages or loss suffered by the city as ~~a~~ result of the franchisee's failure, including the full amount of any compensation, indemnification or cost ~~of~~ removing any property of the franchisee from the public rights-of-way, or the cost of completing or repairing the system construction, upgrade or other work in the public rights-of-way, plus a reasonable allowance for attorneys' fees, **up** to the full amount of the bond. The city may also recover against the security fund **any** amount recoverable under the bond, in cases where the monies available under the bond are insufficient.

(c) Upon completion of a cable system's construction, upgrade or other work in the public rights-of-way and payment of all construction obligations of the franchisee, to the satisfaction of the city, the city shall eliminate the bond or reduce its amount after a reasonable time to determine whether the work performed was satisfactory, which time shall be established considering the nature ~~of~~ the work performed. The city **may** subsequently require ~~a~~ new bond or an increase in the bond amount for any subsequent construction, upgrade or other **work** in the public rights-of-way. In any event, unless otherwise provided in

a franchise agreement, the total amount of the bond shall equal 10 percent of the cost of the work.)

(d) The performance bond shall be issued by **a** surety, with an A-1 or better rating of insurance in Best's Key Rating Guide, Property/Casualty Edition, shall **be** subject to the approval of the administrator and shall contain the following endorsement:

"This bond may not be canceled, or allowed to lapse, until 60 days following receipt by the City of Alexandria, Virginia, of a written notice of an intent to cancel **or** not to renew the bond that has been sent to the city by certified mail, return receipt requested."

Sec. 9-3-261 *Failure constitutes material violation.*

Failure to maintain the security fund, letter of credit **and** performance bond required by this article shall constitute a material violation of **a** franchise.

Sec. 9-3-262 *Remedies.*

In addition to any other remedies available at law or equity, the city **may** apply any one or a combination of the following remedies in the event a franchisee violates any provision of this chapter, its franchise agreement or applicable state or federal law:)

(a) In the event of a material violation, **the city** may terminate the franchise or shorten its *term* pursuant to the procedures specified in this chapter.

(b) In the case of any violation, the city may impose penalties available under *section 9-3-266* and other applicable state and local laws for violation of city ordinances.

(c) In addition to or in lieu of any other remedy, in the **case of any** violation, the city may seek legal or equitable relief from any court of competent jurisdiction.

(d) In the case of any violation, the city may utilize any remedy **provided for** in a franchise agreement.

Sec. 9-3-263 *Remedies **cumulative**.*

All remedies under this chapter and a franchise agreement are cumulative unless otherwise expressly stated. The exercise of one remedy shall not foreclose use of another; nor shall the exercise of **a** remedy or the payment of liquidated damages or penalties relieve a franchisee of its obligations to comply with its franchise. Remedies may **be** used singly or in combination,)

In addition, the city may exercise any rights it has at law or equity.

Sec. 9-3-264 Relation to insurance and indemnity requirements.

Recovery by the city of *any* amounts under an insurance policy, a performance bond, **a security** fund or a letter **of** credit required by this chapter, or otherwise made available by a franchisee, shall not limit the franchisee's duty to indemnify the city for any additional amounts to which the city is due. Nor shall such recovery relieve a franchisee **of** its obligations under a franchise, limit amounts otherwise owed to the city, **or** prevent the city from exercising any other rights or remedies it may have.

Sec. 9-3-265 Cost of consultant.

When necessary to aid in the review or analysis of matters relating to rates and charges, technical standards, system construction **or** upgrades, market surveys or in the **city's** performance of other activities under **this** chapter, the city shall be entitled to employ the services of consultants to assist and supplement the administrator and the office of citizen assistance. Except as **otherwise** provided in a franchise agreement or as the city and a franchisee may agree, all reasonable consultant fees incurred by the city in this regard shall be paid by the franchisee, or the franchisees, **for or with** regard to which **such** work is undertaken by the city. **By its acceptance** of a franchise, a franchisee agree⁶ that such **costs** are not franchise fees, but fall within one of the exception⁶ in the Cable Act, 47 U.S.C. § 542(g)(2). The terms of **this** section shall not apply to any research by the city in connection with the right of the city to purchase the system.

Sec. 9-3-266 Penalties

For violation of provisions of this chapter or a franchise, penalties shall be payable from **a** franchisee's security fund as follows:.

(a) *For* a failure to **submit** *any* plans relating to the construction, installation or upgrade of any part of a system: **\$100/day** for each day the violation continues;

(b) **For** a failure to Commence operations *in* accordance with the requirements of the franchise: **\$1,000/day** for each day the violation continues;

(c) For a failure to substantially complete construction in accordance with the franchise: **\$1,000/day** for each day the violation continues;

(d) For transferring a franchise without approval:
\$2,000/day for each day the violation continues;

(e) For a failure to comply with a **requirement** pertaining to the provision of public, educational and governmental access channels or to the use of the cable system by members of the public, by educational entities or by governmental agencies:
\$1,000/day for each day the violation continues;

(f) For failure to comply with a requirement under this chapter or a franchise agreement pertaining to, or for failure to respond **to** a request of the city for, information, records or documents: **\$100/day** for each day the violation continues;

(g) For a violation of any customer service standard: \$200;
and

(h) **For** any other violation for which actual damages may not be ascertainable: **\$1,000/day** for each day the violation continues.

ARTICLE 0

Administrator

*Sec. 9-3-281 Cable **television** administrator.*

The position of cable television administrator, under the city manager, is hereby established. The administrator shall **be** appointed and may be removed by the manager. Whenever the administrator is authorized by this chapter to present a recommendation, report or other matter to the city council, such presentation shall be made through the city manager. The manager may designate any additional staff as needed to assist the administrator in the performance of the administrator's duties.

*Sec. 9-3-282 **Responsibilities** of administrator.*

The administrator shall be responsible for the day-to-day administration and enforcement of this chapter, **of** franchises granted **pursuant** to this chapter and **of** franchise agreements. The administrator's responsibilities shall include, but not be limited to, the following:

(a) to assist **in the** preparation **of** the invitation to bid for a franchise, to establish criteria for review and ranking of franchise bids, to review and screen bids for a **franchise** and to make recommendations to the city council;

(b) to monitor the timely performance of franchisees in making application for and obtaining all certificates, permits and agreements as required under this chapter or any franchise agreement;

(c) to monitor the performance of franchisees in meeting the construction timetable as provided for in this chapter or any franchise agreement;

(d) to advise and make recommendations to the city council on matters which may constitute grounds for revocation of a franchise in accordance with this chapter;

(e) to advise and make recommendations to the city council on the regulation of rates in accordance with this chapter;

(f) to cooperate with cable systems and government agencies in other jurisdictions and with other franchisees in the development of, and in the supervision of, the interconnection of systems;

(g) to review all franchise records, as required by this chapter, and all franchise reports filed with the FCC and, in the administrator's discretion, to require the preparation and filing by a franchisee of information in addition to that required in this chapter;

(h) to monitor franchisees' performance under the terms of this chapter and any franchise agreement, and to make recommendations to the council to ensure such compliance;

(i) to promote, develop and coordinate the use of public access channels in conjunction with the Alexandria Cable Television Advisory Commission;

(j) to make an annual report to the council, which shall include an account of franchise fees received and distributed by the city, the total number of hours of utilization of various channels with hourly sub-totals for various programming categories, and a review of any plans submitted during the year by each franchisee for development of new services;

(k) to conduct, with franchisees, evaluations of the city's cable systems at least every three years, and to make recommendations to the city council regarding amendments to this chapter or to franchise agreements;

(l) to receive and investigate complaints against franchisees by any person. or upon direction of the city council and, if warranted, to initiate enforcement action in connection with the complaint;

(m) to provide staff assistance and information to the Alexandria Cable Television Advisory Commission; and

(n) to assist the city council in the regulation of rates.

Sec. 9-3-283 Expenditures.

The administrator may make expenditures to carry out the duties assigned in this chapter, subject to the availability of funds.

ARTICLE P

Alexandria Cable Television Advisory Commission

Sec. 9-3-291 Creation.

There shall be established a commission to advise the city council about cable television and to promote and develop access to cable systems. The commission shall be known as the Alexandria Cable Television Advisory Commission ("**Commission**").

Sec. 9-3-292 Members and term.

The city council shall appoint eight members of the Commission, who shall be residents of the city. Five members shall be citizen at-large members. One member shall be a representative of the Alexandria Campus of Northern Virginia Community College, one member shall be a representative of the Alexandria city public schools, and one member shall be a representative of the Alexandria library system. Each member shall serve a three-year term. Any interim vacancy shall be filled by the council for the unexpired portion of the term. No employee of or person with any ownership interest in a franchisee or a franchise granted pursuant to this chapter shall be eligible for membership on the Commission.

Sec. 9-3-293 Officers; quorum; meetings; action by majority.

A quorum of four members present shall be required before the Commission may take official action. A member present but not voting shall be considered in counting a quorum. The Commission shall meet at least six times per year. Additional meetings may be held when necessary and may be called by the chairperson or any two members with 48 hours' notice to all members. All members shall be entitled to vote, and decisions of the Commission shall be determined by majority vote of the members present. Members shall serve without compensation, but may receive reimbursement for expenses subject to the availability of funds.

Sec. 9-3-294 Functions of the Commission.

The Commission shall have the following functions:

(a) to make recommendations and advise the city *government* in the formulation and implementation of general cable communications policy and promote citizen participation in the formulation of **such** policy through public information programs;

(b) to encourage the use *of* public access channel6 among the widest range of persons, including institutions and public agencies;

(c) to advise the city council concerning the use of funds for cable television access and local origination programming, concerning the construction and maintenance of facilities for the production of such programming, and *concerning* the education of the public in the use of **such** facilities when they become available;

(d) to request the administrator to provide additional information on complaint6 against a franchisee where injury to the public interest is deemed by the Commission to have occurred. Such complaint6 will be investigated according to **procedures** established by the Commission. Complaint6 not resolved in a manner deemed satisfactory by the Commission will be **so** noted in the permanent files maintained by the administrator;

(e) to perform such other duties and function6 to support the community access channel6 **as** may be appropriate in order to maximize use among the **widest** *range of* individuals, institutions and community groups; and

(f) to make an annual report to the city council which shall include a review and evaluation of the activities of the **Commission**, along with any comment6 or recommendation6 relative to its function6 that it may choose to make.

ARTICLE Q

State Regulation

Sec. 9-3-301 Virginia public telecommunications board.

A franchisee **shall** comply with all **requirements** of the Virginia Public **Telecommunications** Board not in conflict with FCC regulations, **as** such requirements may be amended from time to time.

ARTICLE R

Right8 of Individuals

Sec. 9-3-311 Discriminatory practices prohibited.

(a) A franchisee **shall** not deny service, deny **access** or **otherwise discriminate against subscribers**, programmer8 or

residents **of** the city **on** the basis of race, color, sex, religion, **ancestry**, national origin, marital status, familial status, age, sexual orientation **or** disability.

(b) A franchisee shall not discriminate or take **any** retaliatory action against **a** person because of the person's exercise of any right under federal, state or local law; nor may a franchisee **require** a person to waive any such rights as a condition of receiving service.

(c) A franchisee shall not deny access or levy different rates or charges on any group of potential residential cable subscribers because of the income of the residents **of** the local area in which the group resides.

(d) A franchisee shall not discriminate in its **rates or** charges **among**, and shall not grant undue preferences to, subscribers, potential subscribers or any group of subscribers or potential subscribers; provided, that a franchisee may offer temporary, bona fide promotional discounts in order to attract or maintain subscribers, so long as such discounts are offered on a non-discriminatory basis to similar classes of subscribers throughout the city,, and may offer discounts for the elderly, the handicapped **or** the economically disadvantaged, and such other discounts as it is expressly entitled to provide under federal law, **if** such discounts are applied in **a** uniform and consistent manner. A franchisee shall comply with all applicable federal, state or local laws and regulations relating to non-discrimination **in the** provision of cable service.

Sec. 9-3-312 Equal employment opportunity.

A franchisee shall not refuse to employ, and shall not discharge from employment or discriminate in compensation or in any other terms, conditions **or** privileges of employment against, any person because of race, color, sex, religion, ancestry, national origin, marital status, familial status, age, sexual **orientation** or disability. A franchisee shall comply with all federal, state and local laws and regulations governing **equal** employment opportunities, as the same may be from time to time amended.

Sec. 9-3-313 Subscriber privacy.

(a) A franchisee **shall** at all times protect the privacy of all subscribers pursuant to the provisions of the Cable Act, 47 **U.S.C. §** 551. A franchisee **shall** not condition subscriber service on the subscriber's grant of permission to disclose information which, under federal or state law, cannot be disclosed without the subscriber's explicit consent.

(b) Neither a franchisee, nor its agents or employees shall, without the prior written authorization of a subscriber, sell or

otherwise make available for commercial purposes the name, address or telephone *number* of the subscriber, or any information that identifies the individual viewing habits of the subscriber.

(c) A franchisee shall take reasonable steps to ensure that the privacy interests **of** subscribers, programmers and general citizens are not infringed as a result of any device or signal associated with the system.

Sec. 9-3-314 Restrictions on cable monitoring.

(a) Except as otherwise provided by federal law or by this section, a franchisee shall not monitor, arrange for the monitoring of or permit any person, expressly or **impliedly** with its knowledge, to monitor any subscriber outlet or receiver for any purpose whatsoever, without the specific written authorization of the subscriber being monitored and then only to the extent so authorized by the subscriber; provided, that a franchisee may conduct such monitoring as may reasonably be necessary for the maintenance and operation of its cable system, and the collection of data for the purpose of ascertaining viewer response to programming.

(b) Any data collected for the purpose of ascertaining viewer response to programming may be disseminated, so long as the data do not reveal any information, including identity, as to individual subscribers.

Sec. 9-3-315 Permission of property owner required.

Except as statutory or common law provides otherwise, no cable, line, wire, amplifier, converter or other equipment owned by a franchisee or used in conjunction with a cable system shall be installed by a franchisee over, under or upon any property without first securing the permission of the owner of the property or, **if** applicable, the owner of an easement which the equipment is to occupy. If such permission is subsequently validly revoked, the franchisee shall remove any of its equipment which is visible and movable, and promptly restore the property to its original condition, at its expense.

ARTICLE S

Resolution **of** Disputes

Sec. 9-3-330 Reasonable *conduct*.

A franchisee and the city shall act reasonably and in good faith, and shall deal fairly and cooperate with each in furtherance of the purposes of this chapter.

Sec. 9-3-331 Intent.

It is the intent of the city to provide for the orderly resolution of any dispute between a franchisee and the city arising out of the interpretation or enforcement **of** any provision **of** this chapter, a franchise, or a franchise agreement or any rule, regulation or procedure relating to cable communications matters. Fact-finding **and** mediation shall be the method of resolving such disputes, except that disputes specifically designated in this chapter as arbitrable may be submitted to that process for binding resolution. None **of** these methods, however, shall be the first resort of the parties, but shall be undertaken only after reasonable time and effort to resolve the dispute by negotiation and agreement.

Sec. 9-3-332 Fact-finding.

Any dispute, upon the election of either a franchisee or the city, shall be submitted to an expert individual, acceptable to both parties, for an investigation of the facts and a report thereof. Such fact-finding shall be for the purpose of developing better information for the use of both parties and shall not be binding on either party.

Sec. 9-3-333 Mediation.

Any dispute, upon the election of either a franchisee or the city, shall be submitted to an expert individual, acceptable to both parties, for the purpose **of** facilitating discussion and receiving new perspectives on the issues and new proposals for compromise. Such mediation shall not be binding on either party.

Sec. 9-3-334 Arbitration.

Only those matters which are expressly arbitrable under the provisions of this chapter may be submitted for arbitration. Arbitrable matters may be submitted to a single expert individual, if both parties agree to do so. Otherwise, the parties shall agree **to** a three-member panel. Within 30 calendar days after appointment of the arbitrators and upon at least 15 calendar days written notice to the parties, the arbitrators shall commence a hearing on the dispute. Arbitration shall be held under the rules and procedures of the American Arbitration Association. Arbitration shall be binding on all parties. Arbitration matters **shall be** held to have been adjudicated and settled, and not open, either directly or indirectly, for review, pursuant to the rules and procedures of the American Arbitration Association.

Sec. 9-3-335 Selection procedures.

(a) In the case of fact-finding or mediation, each party **shall, with** 15 calendar days of the election by one party to

proceed with fact-finding or mediation, present up to three names each for possible service as experts. If there is no agreement on any of the names and **if** one of the parties agrees, the American Arbitration Association shall select an individual to fulfill the function as expert.

(b) In the case **of** arbitration, **both parties** shall, within 15 calendar days of their decision to proceed with arbitration, agree upon the number of persons to serve on the arbitration panel. Such number shall be either one or three. If a **single-member** panel is agreed upon, both parties shall jointly name the person, utilizing the procedures established for fact-finding and mediation. If a three-member panel is agreed upon, the *membership* shall be one person named by the franchisee, one person named by the city and a third person jointly named by the franchisee and the city. Said third person shall serve as the presiding officer of the panel. If there is no agreement on the single arbitrator or the presiding officer of a three-member panel, the parties may decline to proceed to arbitration or **may** select the single arbitrator or the panel's presiding officer, as the case may be, by requesting the American Arbitration Association to select an individual to serve as arbitrator or presiding officer.

Sec. 9-3-336 Fees and expenses.

All fees **of** single experts and arbitrators and all other expenses resulting from fact-finding, mediation or arbitration shall be shared equally by the franchisee and the city.

ARTICLE T

Miscellaneous Provisions

Sec. 9-3-351 Compliance with laws.

A franchisee shall comply with all applicable federal, state and local laws (including all city ordinances), rules and regulations apart from this chapter, heretofore and hereafter adopted and amended.

Sec. 9-3-352 Captions.

The captions to sections throughout this chapter are intended solely to facilitate reading and reference to the sections and provisions of this **chapter**. Such captions shall not affect the meaning or interpretation of this chapter.

Sec. 9-3-353 No recourse against the city.

A franchisee shall **have no** recourse against the city or its officials, boards, commissions, **agents or** employees for any loss, cost, expense, damage or liability arising out **of** any provision

or requirement of this chapter or arising out of the enforcement of this chapter, unless the same shall **be** caused by criminal acts or by willful or gross negligence of a city officer or employee.

Sec. 9-3-354 Rights and remedies.

(a) The rights and remedies provided by **this** chapter are cumulative and shall be in addition to and not in derogation of any other rights and remedies which the city, a franchisee or another person may have with respect to the subject matter of this chapter.

(b) The city hereby reserves to itself the right to intervene in any suit, action or proceeding involving any provision of this chapter.

(c) Specific mention of the materiality of any of the provisions herein is not intended to **be** exclusive of any others for the purpose of determining whether any failure of compliance hereunder is material and substantial.

(d) No franchisee shall be relieved of its obligation to comply with any provision of this chapter by reason of a failure on the part of the city to initiate enforcement action against the franchisee for a violation of the provision. Nor shall any a failure by the city to enforce a provision of **this** chapter **be** deemed to waive the franchisee's violation or to void that provision.

Sec. 9-3-355 Day-to-day enforcement.

The day-to-day enforcement of the provisions of this chapter and any franchise granted pursuant to the chapter shall be the responsibility of the administrator.

Sec. 9-3-356 Powers of court to enforce obedience to franchises.

Nothing in this chapter shall be construed to prevent any party from enforcing compliance with the terms and conditions contained in any franchise, pursuant to section 15.1-315 of the Code of Virginia (1950), as amended.

Sec. 9-3-357 Subsequent action by state or federal agencies.

Should the commonwealth of Virginia, the FCC or any other agency of the federal government **require** a **franchisee** to **deliver** any signals in addition to those **required** by this chapter, to perform any act which is inconsistent with any provision of this chapter or to cease to perform any act required by this **chapter** or a franchise agreement, the franchisee shall so notify the city.

Sec. 9-3-358 Amendments to this chapter.

In order to further the purposes of this chapter, to facilitate the provision of additional communications services to the city through the use of cable television and cable systems, and to ensure that the benefits of such services will reach city residents, the city retains the right to amend this chapter, and no provision to the contrary in a franchise or franchise agreement shall be of any force or effect.

Sec. 9-3-359 Incorporation by reference.

Except as otherwise agreed by a franchisee and the city, a franchise granted pursuant to this chapter shall incorporate by reference this chapter into such franchise as fully as if set forth therein.

Sec. 9-3-360 Prohibition of ownership by city employees.

Persons employed by the city who are involved in the administration or enforcement of this chapter and members of their immediate families shall not own any individual or joint interest, control or holding, direct or indirect, in a franchisee in the form of shares of stock, notes or other indebtedness, in trust or otherwise. The prohibition of this section shall also apply to members of the city council, the city attorney and members of their immediate families.

Sec. 9-3-361 Force majeure.

A franchisee shall not be deemed in default with provisions of its franchise where performance was rendered impossible by war or riots, civil disturbances, natural catastrophes or other circumstances beyond the franchisee's control, and a franchise shall not be revoked or a franchisee penalized in such a situation, provided that the franchisee takes immediate and diligent steps to bring itself into compliance with its Franchise without unduly endangering the health, safety and integrity of the franchisee's employees or property, or of public rights-of-way, public or private property or the public.

Sec. 9-3-362 Public emergency.

In the event of a major public emergency or disaster, as determined by the administrator, a franchisee immediately shall make its cable system, employees and property, as may be necessary, available for use by the city or a civil defense or governmental agency designated by the city to operate the system for the term of such emergency or disaster, for emergency purposes. The city shall return use of the system, employees and property to the franchisee after the emergency or disaster has ended or has been dealt with.

Sec. 9-3-363 Connections to system; use of **antennae**.

(a) Subscribers shall have the right to attach devices to a franchisee's cable system that will allow them to lawfully transmit signals or services, for which they have paid the franchisee, to VCRs, receivers and other terminal equipment, and a franchisee shall provide information to subscribers that will enable them to adjust such devices so that they may be used with the franchisee's system. Subscribers also shall have the right to use their own remote control devices and converters, and other similar equipment.

(b) A franchisee shall not, as a condition of providing cable service, require any subscriber or potential subscriber to remove any existing antenna, shall not disconnect an antenna except at the express direction of the subscriber or potential subscriber, and shall not prohibit or discourage a subscriber from installing an antenna switch, provided that the subscriber's equipment and installation are consistent with applicable codes.

Sec. 9-3-364 Severability.

If any provision of this chapter shall, to any extent, be held to be invalid or unenforceable, the remainder of the chapter shall be valid in all other respects and shall continue to be effective. In the event of a subsequent change in applicable law under which the provision that had been held invalid is no longer invalid, the provision shall thereupon return to full force and effect without further action by the city, unless the city determines otherwise.

Section 3. That this ordinance shall become effective upon the date and at the time of its final passage.

PATRICIA S. **TICER**
Mayor

Final Passage: June 18, 1994